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INFORMATION

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DETAILS OF HOME BUYERS' PLAN RELEASED

Finance Minister Don Mazankowski today released details of a measure announced as part of the Budget that will enable individuals to use their existing funds in registered retirement savings plans (RRSPs) to purchase homes. The Home Buyers' Plan applies to RRSP withdrawals made after February 25, 1992 and before March 2, 1993.

The Minister stated: "The Plan will stimulate the housing market, without reducing tax revenues or risking retirement savings. I expect it to be widely supported."

Details on the Plan are provided in an explanatory booklet entitled "Home Buyers' Plan", which is being sent to local Revenue Canada, Taxation offices. Draft legislation to implement Plan, together with explanatory notes, are attached for the benefit of financial institutions which issue RRSPs and those interested in participating in the Plan.

Home Buyers' Plan -- Draft Legislation

1.(1) Paragraph 18(11)(*b*) of the *Income Tax Act* is repealed and the following substituted therefor:

(*b*) paying a premium (within the meaning that would be assigned by paragraph 146(1)(*f*) if that paragraph were read without reference to the portion thereof following subparagraph (ii) thereof) under a registered retirement savings plan after November 12, 1981;

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

2.(1) Subsection 56(1) of the said Act is amended by adding thereto, immediately after paragraph (*h*) thereof, the following paragraph:

Home Buyers' Plan

(*h*.1) any amount required by section 146.01 to be included in computing the taxpayer's income for the year;

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

3.(1) Paragraph 128(2)(*d*) of the said Act is repealed and the following substituted therefor:

(*d*) except for the purposes of subsections 146(1), 146.01(4), 146.01(9) and Part X.1, a taxation year of the individual shall be deemed to have commenced on the day in the calendar year that the individual became a bankrupt and the individual's taxation year that would otherwise have ended on the last day of that calendar year shall be deemed to have ended on the day immediately before the day on which the individual became a bankrupt;

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

4.(1) Paragraph 146(1)(*f*) of the said Act is repealed and the following substituted therefor:

(*f*) "premium" means any periodic or other amount paid or payable under a retirement savings plan,

(i) as consideration for any contract referred to in subparagraph (*j*)(i) to pay a retirement income, or

(ii) as a contribution or deposit referred to in subparagraph (*j*)(ii) for the purpose stated in that subparagraph

but, except for the purposes of subparagraph (*b*)(ii) and paragraph (2)(*b*.3), does not include a repayment described in subparagraph (*b*)(ii) of the definition "excluded withdrawal" in subsection 146.01(1) or designated under subsection 146.01(3);

(2) Subsection 146(8) of the said Act is repealed and the following substituted therefor:

Benefits taxable

(8) There shall be included in computing the income of a taxpayer for a taxation year the total of all amounts each of which is an amount received by the taxpayer in the year as a benefit out of or under a registered retirement savings plan, other than an excluded withdrawal in respect of the taxpayer (within the meaning assigned by subsection 146.01(1)) or an amount that is included in computing the taxpayer's income pursuant to paragraph (12)(*b*).

Idem--subsequent re-calculation

(8.01) Where an amount referred to in paragraph (*a*) of the definition "eligible amount" in subsection 146.01(1) is received by a taxpayer in a taxation year and, at any time after that year, it is determined that the amount is not an excluded withdrawal (within the meaning assigned by subsection 146.01(1)), notwithstanding subsections 152(4) to (5), such assessments of tax, interest and penalties may be made as are necessary to give effect to such determination.

(3) Subsections (1) and (2) are applicable to the 1992 and subsequent taxation years.

5.(1) The said Act is further amended by adding thereto, immediately after section 146 thereof, the following section:

HOME BUYERS' PLAN

Definitions

146.01(1) In this section,

"annuitant"
«rentier»

"annuitant" has the meaning assigned by subsection 146(1);

"benefit"
«prestation»

"benefit" has the meaning assigned by subsection 146(1);

"eligible amount"
«montant admissible»

"eligible amount" in respect of an individual means an amount received at a particular time by the individual as a benefit out of or under a registered retirement savings plan where

(*a*) the amount is received after February 25, 1992 and before March 2, 1993 pursuant to the written request of the individual in prescribed form wherein the individual sets out the location of a qualifying home (other than a qualifying home acquired by the individual or the individual's spouse before the particular time) that the individual intends to commence using as a principal place of residence not later than 1 year after its acquisition by the individual,

(*b*) the individual was resident in Canada at the particular time and entered into an agreement in writing before the particular time for the acquisition of the qualifying home or with respect to its construction,

(*c*) the individual acquires the qualifying home before October 1, 1993,

(*d*) the individual was resident in Canada throughout the period commencing immediately after the particular time and ending at the time at which the individual acquired the qualifying home, and

(*e*) the total of the amount and all other amounts each of which is an eligible amount received by the individual at or before the particular time does not exceed $20,000;

"excluded premium"
«prime exclue»

"excluded premium" in respect of an individual means a premium under a registered retirement savings plan, where the premium

(*a*) was designated by the individual for the purposes of paragraph 60(*j*), (*j*.1), (*j*.2) or (*l*),

(*b*) was an amount transferred directly from a registered retirement savings plan, registered pension plan, registered retirement income fund or deferred profit sharing plan,

(*c*) was deductible under subsection 146(6.1) in computing the individual's income for any taxation year, or

(*d*) was deducted in computing the individual's income for the 1991 taxation year;

"excluded withdrawal"
«retrait exclu»

"excluded withdrawal" in respect of an individual means

(*a*) an eligible amount received by the individual, or

(*b*) an amount (other than an eligible amount) that would, if the definition "eligible amount" were read without reference to paragraphs (*c*) and (*d*) thereof, be an eligible amount received by the individual out of or under a registered retirement savings plan in respect of which a person is the issuer, where either

(i) the individual died before 1994 and was resident in Canada throughout the period commencing immediately after the amount was received and ending at the time of the death, or

(ii) the amount is repaid to a registered retirement savings plan in respect of which the person is the issuer before 1994 (or where the individual was not resident in Canada at the time the individual filed a return of income for the taxation year in which the amount was

received by the individual, before the earlier of January 1, 1994 and the time at which the individual filed that return) and the issuer is notified of the repayment in prescribed form submitted to the issuer at the time the repayment is made;

"issuer"
«émetteur»

"issuer" has the meaning assigned by subsection 146(1);

"qualifying home"
«habitation admissible»

"qualifying home" means

(*a*) a housing unit located in Canada, or

(*b*) a share of the capital stock of a cooperative housing corporation, the holder of which is entitled to possession of a housing unit located in Canada,

except that, where the context so requires, the reference to a qualifying home that is a share described in paragraph (*b*) shall mean the housing unit to which the share described in that paragraph relates;

"quarter"
«trimestre»

"quarter" means any of the following periods in a calendar year:

(*a*) the period beginning on January 1 and ending on March 31,

(*b*) the period beginning on April 1 and ending on June 30,

(*c*) the period beginning on July 1 and ending on September 30, and

(*d*) the period beginning on October 1 and ending on December 31; and

"spouse"
«conjoint»

"spouse" has the meaning assigned by subsection 146(1.1).

Interpretation

(2) For the purposes of this section,

(*a*) an individual shall be considered to have acquired a qualifying home if the individual acquired the qualifying home jointly with one or more other persons; and

(*b*) where an individual agrees to acquire a condominium unit, the individual shall be deemed to acquire that unit on the date the individual is entitled to immediate vacant possession of it.

Repayment of eligible amount

(3) An amount paid by an individual at a particular time in a taxation year under a retirement savings plan that was at the end of the year a registered retirement savings plan under which the individual is the annuitant may be designated by the individual under this subsection (in prescribed form submitted at the time of the payment to the issuer of the plan) to the extent that the amount so paid does not exceed the amount, if any, by which

(*a*) the total of all amounts each of which is an eligible amount received by the individual before the particular time

exceeds the total of

(*b*) the total of all amounts each of which is an amount designated under this subsection in respect of amounts paid before the particular time to a registered retirement savings plan under which the individual is the annuitant; and

(*c*) the total of all amounts each of which is an amount included in computing the income of the individual under subsection (4) or (5) for a taxation year ending before the particular time.

Where portion of eligible amount not repaid

(4) There shall be included in computing the income of an individual for a particular taxation year ending after 1993 the amount determined by the formula

$$(A - B - C)/(15 - D) - E$$

where

A is

(*a*) where the individual died or ceased to be resident in Canada in the particular year, nil, and

(*b*) in any other case, the total of all amounts each of which is an eligible amount received by the individual in a preceding taxation year;

B is

(*a*) where the particular year is the 1994 taxation year, nil, and

(*b*) in any other case, the total of all amounts each of which is an amount designated by the individual under subsection (3) for a preceding taxation year;

C is the total of all amounts each of which is an amount included under this subsection or subsection (5) in computing the income of the individual for a preceding taxation year;

D is the lesser of 14 and the number of taxation years of the individual ending in the period commencing January 1, 1994 and ending at the beginning of the particular year; and

E is

(*a*) where the particular year is the 1994 taxation year, the total of all amounts each of which is an amount designated by the individual under subsection (3) for the particular year or either of the two immediately preceding taxation years, and

(*b*) in any other case, the total of all amounts each of which is an amount designated by the individual under subsection (3) for the particular year.

Where individual becomes a non-resident

(5) Where, at any time in a taxation year, an individual has ceased to be resident in Canada, there shall be included in computing the income of the individual for the period in the year during which the individual was resident in Canada the amount, if any, by which

(*a*) the total of all amounts each of which is an eligible amount received by the individual in the year or a preceding taxation year

exceeds the total of

(*b*) the total of all amounts each of which is an amount designated by the individual under subsection (*3*) that is paid not later than 90 days from that time and before the individual files a return of income for the year, and

(*c*) the total of all amounts each of which is an amount included under subsection (4) in computing the income of the individual for a preceding taxation year.

Where individual dies

(6) Where, at any time in a taxation year, an individual has died, there shall be included in computing the income of the individual for the year the amount, if any, by which

(*a*) the total of all amounts each of which is an excluded withdrawal in respect of the individual received by the individual in the year or a preceding taxation year, other than an excluded withdrawal in respect of the individual repaid as described in subparagraph (*b*)(ii) of the definition "excluded withdrawal" in subsection (1) before the individual died

exceeds the total of

(*b*) the total of all amounts each of which is an amount designated by the individual under subsection (3) that is paid before that time, and

(*c*) the total of all amounts each of which is an amount included under subsection (4) or (5) in computing the income of the individual for a preceding taxation year.

Idem

(7) Where an individual's spouse was resident in Canada immediately before the death of the individual in a taxation year and the spouse and the individual's legal representative jointly so elect in writing in the individual's return of income under this Part for the year,

(*a*) subsection (6) shall not apply in respect of the individual; and

(*b*) except for the purposes of subsection (9), the spouse shall be deemed to have received an eligible amount at the time of the individual's death equal to

the amount that would, but for this subsection, be determined in respect of the individual under subsection (6).

Filing of prescribed form

(8) A prescribed form referred to in this section or in subparagraph 146(8)(*b*)(ii) that is submitted to an issuer shall be filed with the Minister by the issuer not later than 15 days after the quarter in which it was submitted to the issuer.

Income inclusion

(9) There shall be included in computing the income for the 1992 taxation year of an individual who was resident in Canada at the end of the year the amount determined by the formula

A - B

where

A is the lesser of

(*a*) the total of all amounts each of which is a premium (other than an excluded premium in respect of the individual) paid by the individual after February 25, 1992 and before March 2, 1993 under a registered retirement savings plan under which the individual or the individual's spouse is the annuitant, and

(*b*) the total of all amounts each of which is an eligible amount received by the individual in 1992 or 1993; and

B is the total of all amounts each of which is an amount received by the individual after February 25, 1992 and before March 2, 1993 and included in computing the individual's income for the 1992 or 1993 taxation year by reason of subsection 146(8).

Idem

(10) Notwithstanding subsections 152(4) to (5), such assessments of tax, interest and penalties may be made as are necessary to give effect to subsection (9).

(2) Subsection (1) is applicable to the 1992 and subsequent taxation years.

Home Buyers' Plan -- Explanatory Notes

ITA
18(11)(*b*)

Paragraphs 20(1)(*c*), (*d*) and (*e*) of the *Income Tax Act* permit a deduction for interest and certain other financing expenses relating to borrowed money used by an individual for the purposes of earning income from a business or property. These provisions are, however, subject to subsection 18(11) which prohibits the deduction of such expenses for the purposes of paying a "premium" to a registered retirement savings plan and other related purposes.

Paragraph 18(11)(*b*) is amended so that, for the purposes of subsection 18(11), a "premium" includes any contribution to an RRSP. This amendment is strictly consequential to the amendment to the definition of "premium" in subsection 146(1) which excludes from the definition contributions which are repayments of amounts withdrawn under the new Home Buyers' Plan described in the commentary on new section 146.01. The effect of the amendment is that interest on borrowed money to make such repayments is not deductible in computing income.

This amendment is applicable to the 1992 and subsequent taxation years.

ITA
56(1)(*h*.1)

Section 56 of the Act lists certain types of income that are required to be included in computing the income of an individual for a taxation year from a source other than property, business or employment and other than from the disposition of capital properties.

Paragraph 56(1)(*h*.1) is introduced to make reference to certain amounts required to be included in income pursuant to the new Home Buyers' Plan described in detail in the commentary to section 146.01. Under the Home Buyers' Plan, a home buyer may withdraw up to $20,000 of RRSP funds before March 2, 1993 to acquire a qualifying home. Amounts may be included in income pursuant to any of new subsections 146.01(4), (5), (6) and (9).

This amendment is applicable to the 1992 and subsequent taxation years.

ITA
128(2)

Subsection 128(2) of the Act contains a number of special rules applicable where an individual becomes a bankrupt. For most purposes, paragraph 128(2)(*d*) divides the calendar year in which an individual becomes a bankrupt into two taxation years: one taxation year that runs from January 1 to the day before the bankruptcy and the other that commences on the day of the bankruptcy and runs to the end of the calendar year.

Under the new Home Buyers' Plan described in the commentary to section 146.01, a home buyer may withdraw up to $20,000 of RRSP funds on a tax-free basis to acquire a qualifying home. A specified repayment in respect of the withdrawal is determined for the years 1994 to 2008. Any excess of the specified repayment of an individual for a taxation year over the actual repayments to one or more RRSPs for that year by the individual is included in the individual's income under new subsection 146.01(4). The Home Buyers' Plan also provides for an income inclusion under new subsection 146.01(9) for the 1992 taxation year, which is designed to reduce discourage individuals from contributing to an RRSP and shortly thereafter withdrawing the contribution to take advantage of the Home Buyers' Plan.

Paragraph 128(2)(*d*) is amended so that it does not apply for the purposes of subsections 146.01(4) and (9). As a consequence, the income inclusion will arise under those subsections only in respect of a taxation year ending at the end of a calendar year.

This amendment is applicable to the 1992 and subsequent taxation years.

ITA
146(1)(*f*)

Section 146 of the Act sets out the rules relating to RRSPs.

Paragraph 146(1)(*f*) defines the term "premium" as a payment made by an individual to a retirement savings plan in consideration for benefits provided under the plan.

The definition is amended so that, except for specified purposes, it does not include payments designated under new subsection 146.01(3) or repayments described in subparagraph (1)(*b*)(ii) of the definition "excluded withdrawal" in subsection 146.01(1). Amounts designated under subsection 146.01(3) are repayments of eligible amounts received pursuant to the Home Buyers' Plan. Repayments described in this definition "excluded withdrawal" are essentially repayments of amounts that had been expected to become eligible amounts when withdrawn. (See the commentary on the definition "eligible amount" in subsection 146.01(1).) As a consequence of the amendment, these

repayments are not taken into account in determining RRSP deductions, in determining the computation of the penalty tax under Part X.1 of the Act or for any other purpose (other than for the purposes of the prohibition of the payments of premiums after maturity of an RRSP and for the purposes of defining a "benefit" under an RRSP).

This amendment is applicable to the 1992 and subsequent taxation years.

ITA
146(8) and (8.01)

Subsection 146(8) of the Act provides that amounts received by an individual in a taxation year out of or under an RRSP are required to be included in computing the individual's income for the year.

Subsection 146(8) is amended so that certain amounts received by an individual pursuant to the Home Buyers' Plan described in section 146.01 are excluded from the total otherwise required to be included in computing the individual's income. These amounts are described in greater detail in the definition "eligible amount" in subsection 146.01(1).

New subsection 146(8.01) applies where an amount is withdrawn by an individual from an RRSP pursuant to the Home Buyers' Plan and the individual does not acquire a qualifying home before October 1, 1993 and does not repay the withdrawn amount pursuant to subparagraph (*b*)(ii) of the definition "excluded withdrawal" in subsection 146.01(1). In these circumstances, the withdrawn amount is not an "excluded withdrawal" and there is no entitlement to an income exclusion for the withdrawal under amended subsection 146(8) for the individual or, where the attribution rules in subsection 146(8.3) apply, for the individual's spouse. New subsection 146(8.01) ensures that the Minister of National Revenue is able to assess or reassess the tax, interest and penalties for the individual or the individual's spouse outside the normal time limits to recognize that any exclusion claimed did not apply.

These amendments are applicable to the 1992 and subsequent taxation years.

ITA
146.01

Summary

The rules relating to the Home Buyers' Plan are set out in section 146.01 of the Act. Under the Home Buyers' Plan, a home buyer may withdraw amounts (referred to in the section as "eligible amounts") from one or more of his or her RRSPs on a tax-free

basis after February 25, 1992 and before March 2, 1993 and repay the amount on a non-deductible basis over the 15 years from 1994 to 2008. The total of the eligible amounts withdrawn by an individual must not exceed $20,000.

By the end of the 1994 taxation year, the buyer is required to repay 1/15 of the withdrawn amount to an RRSP or include any shortfall in income. The required repayment for each subsequent taxation year is 1/T of the excess of the portion of the withdrawn amount that has not been repaid before the year in excess of the total shortfalls included in the buyers' income in previous taxation years, where T = 14 for 1995, 13 for 1996 and so on. A statement of the required repayment of a home buyer for each taxation year under the Home Buyers' Plan will be provided by Revenue Canada to the home buyer before the end of the year.

Special rules are provided where a home buyer dies or ceases to be resident in Canada. In this case, there is an income inclusion for the home buyer equal to the excess of the portion of the withdrawn amount that has not been repaid over the total shortfalls included in the home buyer's income in previous years. If a home buyer becomes a non-resident at a particular time in a taxation year, the home buyer may avoid the income inclusion to the extent that the above excess is repaid before filing a return of income for the year and within 90 days of becoming a non-resident. When a home buyer dies, the surviving spouse may elect with the legal representatives of the deceased to avoid any such income inclusion. Where such an election is made, the surviving spouse in effect assumes the position of the deceased by being treated as having received an eligible amount equal to the above excess at the time of the deceased's death. This amount is added to any balance of eligible amounts received by the surviving spouse that have not been previously repaid to RRSPs.

An individual who participates in the Home Buyers' Plan is prevented from obtaining any net tax benefit from a deduction of RRSP premiums which are paid after February 25, 1992 and before March 2, 1993. This is provided by means of an income inclusion generally equal to the lesser of the amount of those premiums and the total RRSP withdrawals pursuant to the Home Buyers' Plan.

Examples 1 to 3 illustrate the operation of the basic rules with respect to the Home Buyers' Plan. The operation of the special rules on death and with respect to non-residents is illustrated in the commentary to subsections 146.01(5) to (7). The commentary to subsection 146.01(9) explains more fully the income inclusion referred to in the previous paragraph.

Example 1

An individual withdraws an eligible amount of $15,000 from his or her RRSP in July 1992 and uses the funds for a downpayment on a qualifying home. The individual makes designated repayments of $1,000 per year to RRSPs under which the individual is the annuitant in each of the years 1994 to 2008.

Result:

There are no income tax implications for the individual. The $15,000 withdrawal is not included in the individual's income for 1992 and the annual repayments in subsequent years are not deductible in computing the individual's income.

Example 2

An individual withdraws an eligible amount of $15,000 from his or her RRSP in July 1992 and uses the funds for a downpayment on a qualifying home. In 1994, the individual makes a designated repayment of $750.

Result:

The $15,000 withdrawal is not included in the individual's income for the 1992 taxation year. Because the required repayment for 1994 is $1,000 ($15,000/15) and only $750 is repaid, the shortfall of $250 is required to be included in the individual's income for 1994.

Example 3

An individual withdraws an eligible amount of $15,000 from his or her RRSP in July 1992 and uses the funds for a downpayment on a qualifying home. In 1994, a designated repayment of $2,400 is made. In July 1995, a designated repayment of $600 is made.

Result:

The $15,000 withdrawal is not included in the individual's income for the 1992 taxation year. As in examples 1 and 2, the required repayment for the year 1994 is $1,000. Since more than this amount was repaid, there is no income inclusion required for 1994. The required repayment for 1995 is $900 (($15,000-2,400)/14). The shortfall of $300 for 1995 is required to be included in the individual's income for 1995.

ITA
146.01(1)

Subsection 146.01(1) defines various expressions for the purposes of the Home Buyers' Plan. The terms "annuitant", "benefit", and "issuer" are defined by reference to the existing definitions used for the purposes of the provisions relating to RRSPs in subsection 146(1). The term "spouse" is defined with reference to subsection 146(1.1), and includes a common law spouse. The other definitions are described below.

"eligible amount"

An "eligible amount" received by an individual out of an RRSP under the Home Buyers' Plan is not included in the individual's income because it is an "excluded withdrawal" which is not taxable by reason of amended subsection 146(8). There are a number of conditions which must be satisfied for an RRSP withdrawal to qualify as an "eligible amount".

Paragraphs (*a*) and (*b*) of the definition "eligible amount" require that an eligible amount is to be received after February 25, 1992 and before March 2, 1993 pursuant to the written request in prescribed form of an individual resident in Canada wherein the individual sets out the location of a qualifying home that the individual intends to commence using as a principal place of residence not later than 1 year after its acquisition. The individual is required to have entered into an agreement in writing before the time of withdrawal for the acquisition of the qualifying home or with respect to its construction. Paragraph (*a*) also requires that the qualifying home must never have been previously acquired by the individual or the individual's spouse.

Paragraphs (*c*) and (*d*) of the definition of "eligible amount" provide conditions that must be satisfied after the time of the withdrawal of RRSP funds by an individual. A qualifying home must be acquired before October 1, 1993. Where the qualifying home is under construction by the individual, it is intended that it be considered to have been acquired by the individual at such time as it becomes inhabitable by the individual. An additional condition, applicable in all cases, is that the individual must be resident in Canada until the individual acquires the qualifying home.

Paragraph (*e*) of the definition provides that the total eligible amounts in respect of an individual cannot exceed $20,000.

Where an amount withdrawn from an RRSP fails to qualify as an eligible amount because the conditions in paragraph (*c*) or (*d*) of the definition are not satisfied, the withdrawn amount still qualifies as a non-taxable "excluded withdrawal" of an individual in two cases. The first case is where the individual dies before 1994 and has not ceased to be resident in Canada after the receipt of the withdrawn amount.

The second case is where the individual repays all or part of the withdrawn amount to the RRSP (or another RRSP having a common issuer) before 1994 and the individual notifies the issuer of the repayment in prescribed form submitted to the issuer at the time of the repayment. Where an individual is not resident of Canada at the time of filing a return of income for the year of withdrawal, the repayment to the RRSP must also be made before the individual files that return. Any such repayment is, for most purposes, not considered to be a "premium" paid to an RRSP and thus will not affect RRSP deduction limits or the computation of penalty tax under Part X.1.

"excluded premium"

This definition is discussed on the commentary to new subsections 146.01(9) and (10).

"excluded withdrawal"

This definition is discussed on the commentary to the definition "eligible amount", above.

"qualifying home"

A "qualifying home" is defined as a housing unit located in Canada. It also includes a share of the capital stock of a cooperative housing corporation, where the holder of the share is entitled to possessing of a housing unit located in Canada. However, where context requires, a home that is a such a share means the housing unit to which the share relates. For RRSP funds received by an individual to qualify as an "eligible amount", it is generally required that an individual acquire a qualifying home before October 1, 1993.

"quarter"

A "quarter" of a calendar year is defined as any of the following periods in the year: January 1 to March 31, April 1 to June 30, July 1 to September 30 and October 1 to December 31. The definition is relevant for the filing requirements set out in new subsection 146.01(8).

ITA
146.01(2)

Subsection 146.01(2) of the Act provides a number of special rules that are relevant for the purposes of interpreting the definitions in subsection 146.01(1).

Paragraph 146.01(2)(*a*) ensures that an individual is considered to have acquired a qualifying home if was jointly acquired with one or more other persons.

Paragraph 146.01(2)(*b*) applies where an individual agrees to purchase a condominium unit. In this case, the individual is treated as having acquired the unit on the date the individual is entitled to immediate vacant possession of the unit. This provision enables an amount withdrawn by an individual to qualify as an "eligible amount" under subsection 146.01(1) where the individual is able to occupy a unit before the end of September 1993 but does not become a registered owner of the condominium unit until sometime later.

ITA
146.01(3)

Subsection 146.01(3) of the Act provides that an individual may designate a contribution to an RRSP under which the individual is the annuitant as a repayment of an "eligible amount". As a consequence of the definition of "premium" in paragraph 146(1)(*f*), the result of such a designation is that the repayment is disregarded for the purposes of determining deductible RRSP contributions and the special penalty tax on overcontributions under Part X.1 of the Act. Because of the RRSP registration rules, no repayments under new subsection 146.01(3) may be made to an RRSP of which an individual is the annuitant after the end of the calendar year in which the individual attains 71 years of age.

The amount that may be designated by an individual under subsection 146.01(3) in respect of an amount paid at any time to his or her RRSP cannot exceed the total of all eligible amounts previously received by the individual minus the sum of all repayments previously designated and amounts previously included in the taxpayer's income under subsections 146.01(4) and (5).

ITA
146.01(4)

Subsection 146.01(4) of the Act provides that, in the 1994 taxation year, an individual is required to include in income the amount, if any, by which 1/15 of all eligible amounts received by the individual exceeds repayments made under subsection

146.01(3) before the end of the year in respect of the eligible amounts. The repayment required to avoid an income inclusion for a subsequent taxation year is 1/T of the excess of the portion of the withdrawn amount that has not been repaid before the year over the total amounts included in the individual's income in previous taxation years, where T = 14 for the first subsequent year, 13 for the second subsequent year and so on.

The application of this subsection is illustrated in Examples 2 and 3, above.

ITA
146.01(5)

Subsection 146.01(5) of the Act is a special rule which applies where an individual ceases to be resident in Canada after having withdrawn an "eligible amount" under the Home Buyers' Plan. The rule provides for an income inclusion for an individual in these circumstances equal to the total eligible amounts received by the individual in the taxation year or a preceding taxation year minus the sum of

- all previous income inclusions under subsection 146.01(4), and

- all repayments under subsection 146.01(3) in respect of those eligible amounts made before the individual files a return of income for the year and not more than 90 days after the date on which the individual ceased to be resident in Canada.

<u>Example 4</u>

An individual resident in Canada withdraws RRSP funds in 1992 for the purposes of acquiring a qualifying home. On April 2, 1993, the individual ceases to be resident in Canada prior to acquiring the qualifying home. On April 30, 1993, the individual files an income tax return for the 1992 taxation year.

Result:

By definition, the amount received from the RRSP cannot be an "eligible amount" because the individual is not resident in Canada at the time of the acquisition of the qualifying home. As a consequence, the individual will be required to include the RRSP withdrawal in income in the taxation year of its receipt, except to the extent it is an "excluded withdrawal" repaid to the RRSP before April 30, 1993. This is discussed further in the commentary to the definition "eligible amount" in subsection 146.01(1).

Example 5

An individual withdraws an eligible amount of $15,000 from his or her RRSP in July 1992 and uses the funds for a downpayment on a qualifying home. In 1993, a designated repayment of $3,000 is made. In November 1994, the individual ceases to be resident in Canada. In January 1995, a further designated repayment of $1,000 is made by the individual. The individual files a return of income for 1994 in March 1995.

Result:

The individual is required to include the amount of $11,000 ($15,000 - $3,000 - $1,000) in his or her income for the period in the 1994 taxation year during which the individual was resident in Canada. If the individual had repaid a further $11,000 within 90 days of becoming a non-resident, this income inclusion would be avoided.

ITA
146.01(6) and (7)

Subsection 146.01(6) of the Act provides rules which apply in the event that an individual dies and has previously received eligible amounts or "excluded withdrawals" which have not been repaid to RRSPs. (See commentary on the definition "eligible amount" in subsection 146.01(1).) Where the total of such amounts exceeds the sum of designated amounts repaid by the individual and income inclusions of the individual under subsections 146.01(4) and (5), the excess is included in computing the individual's income for the year of death. An exception to this rule is made where an election in writing is made under subsection 146.01(7).

An election may be made under subsection 146.01(7) where the deceased individual has a spouse who is resident in Canada immediately before the individual's death. Where the surviving spouse and the deceased spouse's legal representatives do elect in the deceased's terminal return, the excess is not included in the deceased's income. Instead, the surviving spouse is treated as having received an eligible amount, at the time of the deceased's death, equal to the excess. This amount is added to the surviving spouse's own balance of eligible amounts that have not have repaid at that time to RRSPs.

Example 6

An individual withdraws an eligible amount of $15,000 from his or her RRSP in July 1992 and uses the funds for a downpayment on a qualifying home. In 1994, a designated repayment of $3,000 is made. In November 1995, the individual dies.

Result:

The individual's income inclusion for 1995 would be $12,000 ($15,000 - $3,000). This amount is required to be reported on the individual's terminal return.

Example 7

Same facts as in example 6, except that an election is made by the deceased's spouse under subsection 146.01(7).

Result:

The deceased's income inclusion is nil. The tax consequences to the spouse are determined as if the spouse had withdrawn an eligible amount of $12,000 in the year of death. The spouse's required repayments commence in 1996 and may end as late as 2008.

ITA
146.01(8)

New subsection 146.01(8) of the Act provides that a prescribed form submitted to an issuer of an RRSP in connection with the Home Buyers' Plan must be filed with Revenue Canada no later than 15 days after the calendar quarter in which it was submitted to the issuer. Prescribed forms are submitted under paragraph (*a*) of the definition "eligible amount" in subsection 146.01(1) (request for tax-free withdrawal from RRSP), subparagraph (*b*)(ii) of the definition "excluded withdrawal" in subsection 146.01(1) (repayment to RRSP in event of failure to purchase qualifying home) and subsection 146.01(3) (repayment of eligible amounts).

ITA
146.01(9) and (10)

New subsection 146.01(9) of the Act provides an income inclusion with respect to RRSP premiums paid after February 25, 1992 and before March 2, 1993 by an individual who participates in the Home Buyers' Plan. This inclusion is intended to discourage individuals from contributing to an RRSP and shortly thereafter withdrawing the contribution to take advantage of the Home Buyers' Plan.

Subsection 146.01(9) applies only to the 1992 taxation year. An individual is required to include in computing income the lesser of two amounts. The first amount is the total RRSP premiums (other than "excluded premiums", described below) paid by the

individual after February 25, 1992 and before March 2, 1993. The second amount is the total eligible amounts withdrawn from an RRSP by the individual under the Home Buyers' Plan in the same period. The income inclusion is reduced by certain amounts withdrawn from RRSPs, as described below.

"Excluded premiums" do not enter into the determination of the amount to be included in income under subsection 146.01(9). As defined in subsection 146.01(1), excluded premiums are

- RRSP premiums designated for the purposes of paragraph 60(*j*) (lump sum transfers to RRSP from foreign pension plans and arrangements), paragraph 60(*j*.1) (transfer of retiring allowance to RRSP), paragraph 60(*j*.2) (transfer of pension income to spousal RRSP) and paragraph 60(*l*) (transfer of refund of premiums on death and certain other amounts),

- amounts transferred directly from an RRSP, registered pension plan, registered retirement income fund or deferred profit sharing plan to an RRSP,

- RRSP premiums deductible under subsection 146(6.1) (recontributions of certain withdrawals made for the purposes of acquiring past service benefits under a registered pension plan), and

- RRSP premiums paid after February 25, 1992 and before March 1, 1992 that were deducted in computing income for the 1991 taxation year.

The amount of the income inclusion for an individual under subsection 146.01(9) is reduced by amounts withdrawn from an RRSP and included in the individual's income under subsection 146(8). As described in example 8, such withdrawals will enable an individual to reverse the tax consequences of a paying an RRSP premium.

New subsection 146.01(10) ensures that the Minister of National Revenue is able to assess or reassess the tax, interest and penalties for an individual outside the normal time limits to recognize an income inclusion under subsection 146.01(9).

<u>Example 8</u>

An individual pays an RRSP premium of $2,100 in April 1992. The individual withdraws an eligible amount of $8,000 in January 1993 and uses it for a downpayment on a qualifying home. The individual has $2,400 of RRSP deduction room for the 1992 taxation year.

Result:

If the individual does not withdraw the premium before March 2, 1993, the individual is required to include $2,100 in income for the 1992 taxation year under subsection 146.01(9). The $2,100 income inclusion is offset by a $2,100 RRSP deduction for the 1992 taxation year. In this case, only $300 of unused RRSP room ($2,400 - $2,100) would be available to be carried forward to future taxation years.

Alternatively, the individual may choose to withdraw the premium before March 2, 1993, without deducting it. In this case, there would be no income inclusion under subsection 146.01(9). The withdrawal would be included in income under subsection 146(8), but would be offset by a deduction under subsection 146(8.2). The $2,400 of unused 1992 RRSP room would be carried forward and the individual may accordingly deduct an RRSP premium of that amount paid after March 1, 1993 and before March 2, 1994 in computing income for the 1993 taxation year.